

POLICY GA 3.8 DISCLOSURE OF CONFIDENTIAL INFORMATION TO HUMAN RIGHTS COMMITTEES

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- A. PURPOSE: To disclose information to Human Rights Committees for the purposes of providing independent oversight and protecting the rights of all enrolled persons to the extent allowable under federal and state law.
- B. SCOPE: ADHS/DBHS and T/RBHAs. As applicable T/RBHAs must ensure that all subcontracted providers, including the Arizona State Hospital, adhere to the requirements of this policy.
- C. POLICY: Records of currently or previously enrolled persons shall be provided to Human Rights Committees in accordance with federal and state law.
- D. REFERENCES: 42 CFR 2.1 et seq.  
A.R.S. § 36-509 (A) (13)  
A.R.S. Title 12, Chapter 7, Article 6  
A.R.S. Title 36, Chapter 6, Article 4  
A.R.S. § 8-201 (21)  
A.R.S. § 41-3803  
A.R.S. § 41-3804  
A.R.S. § 46-451 (A) (7)  
R9-20-203  
R9-21-101 (B) (1)  
ADHS/DBHS Policy QM 2.5, Reports of Incidents, Accidents and Deaths  
ADHS/DBHS Policy CO 1.4, Confidentiality
- E. DEFINITIONS:
1. Abuse
- The infliction of, or allowing another person to inflict or cause, physical pain or injury, impairment of bodily function, disfigurement or serious emotional damage which may be evidenced by severe anxiety, depression, withdrawal or

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untoward aggressive behavior. Such abuse may be caused by acts or omissions of an individual having responsibility for the care, custody or control of a client receiving behavioral health services or community services. Abuse shall also include sexual misconduct, assault, molestation, incest, or prostitution of, or with, a client under the care of personnel of a mental health agency.

2. ADHS Office of Human Rights

The Office of Human Rights is established within ADHS and is responsible for hiring, training, supervision and coordination of human rights advocates. Human rights advocates assist and advocate on behalf of persons determined to have a serious mental illness in resolving appeals and grievances and coordinate and assist Human Rights Committees in performing their duties.

3. Alcohol and Drug Abuse Program

- a. An individual or entity (other than a general medical care facility) who holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment;
- b. An identified unit within a general medical facility which holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment;
- c. Medical personnel or other staff in a general medical care facility whose primary function is the provision of alcohol or drug abuse diagnosis, treatment or referral for treatment and who are identified as such providers.

4. Confidential HIV Information

Information concerning whether a person has had an HIV-related test or has HIV infection, HIV related illness or acquired immune deficiency syndrome and includes information which identifies or reasonably permits identification of that person or the person's contacts.

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5. Enrolled Person

A Title XIX, Title XXI or Non-Title XIX/XXI eligible person recorded in the ADHS Information System as specified by ADHS.

6. Human Rights Committees

Human Rights Committees are established within ADHS to provide independent oversight and to ensure the rights of enrolled persons are protected.

7. Neglect

If there is an allegation that an adult is a victim of neglect, neglect is a pattern of conduct without the person's informed consent resulting in deprivation of food, water, medication, medical services, shelter, cooling, heating or other services necessary to maintain minimum physical or mental health.

If there is an allegation that a child is a victim of neglect, neglect is the inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes substantial risk of harm to the child's health or welfare.

8. Violation of Rights

For all enrolled persons, a violation of those rights contained in A.A.C. R9-20-203 and, for persons enrolled as seriously mentally ill, rights contained in A.A.C. Title 9, Chapter 21, Article 2.

F. PROCEDURES

1. T/RBHAs and the Arizona State Hospital shall provide Incident, Accident and Death Reports concerning issues including but not limited to reports of possible abuse, neglect or denial of rights to Human Rights Committees as required in ADHS/DBHS Policy and Procedure QM 2.5, *Reports of Incidents, Accidents and Deaths*.

2. When a Human Rights Committee requests information regarding the outcome of a report of possible abuse, neglect or violation of rights, the T/RBHA, or Arizona State Hospital shall do one of the following:
  - a. Conduct an investigation of the incident:
    - (1) For incidents in which a person currently or previously enrolled as seriously mentally ill is the possible victim, the investigation shall follow the requirements in A.A.C. Title 9, Chapter 21, Article 4.
    - (2) For incidents in which a currently or previously enrolled child or non-seriously mentally ill adult is the possible victim, the investigation shall be completed within 35 days of the request and shall determine: all information surrounding the incident, whether the incident constitutes abuse, neglect, or a violation of rights, and any corrective action needed as a result of the incident.
  - b. If an investigation has already been conducted by the T/RBHA or Arizona State Hospital and can be disclosed without violating any confidentiality provisions, the T/RBHA or Arizona State Hospital shall provide the final investigation decision to the Human Rights Committee. The final investigation decision consists of, at a minimum, the following information:
    - (1) The accepted portion of the investigation report with respect to the facts found;
    - (2) A summary of the investigation findings; and
    - (3) Conclusions and corrective action taken.
  - c. Protected health information regarding any currently or previously enrolled person shall not be included in the final investigation decision provided to the Human Rights Committee.
3. When a Human Rights Committee requests protected health information concerning a currently or previously enrolled person, it must first demonstrate

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to ADHS/DBHS that the information is necessary to perform a function that is related to the oversight of the behavioral health system or have written authorization from the person to review protected health information.

a. The T/RBHA, ADHS/DBHS or Arizona State Hospital shall do the following:

(1) In the event that ADHS/DBHS determines that the Human Rights Committee needs protected health information in its capacity as a health oversight agency, or the Human Rights Committee has the person's written authorization, the T/RBHA, ADHS/DBHS or Arizona State Hospital shall do the following in providing information in response to the committee's request:

(a) The T/RBHA, ADHS/DBHS or Arizona State Hospital shall first review the requested information and determine if any of the following types of information are present: communicable disease related information, including confidential HIV information, and/or information concerning diagnosis, treatment or referral from an alcohol or drug abuse program. If no such information is present, then the T/RBHA, ADHS/DBHS or Arizona State Hospital shall provide the information adhering to the requirements in F.3.a.(1)(a)(iii-iv) below. If communicable disease related information, including confidential HIV information, and/or information concerning diagnosis, treatment or referral from an alcohol or drug abuse program is found, then the T/RBHA, ADHS/DBHS or Arizona State Hospital shall:

i. Contact the currently or previously enrolled person or legal guardian if an adult, or the custodial parent or legal guardian if a child, and ask if the person is willing to sign an authorization for the release of communicable disease related information, including confidential HIV information, and/or information concerning diagnosis, treatment or referral from an alcohol or drug abuse program. The T/RBHA, ADHS/DBHS or Arizona State Hospital shall provide the name and telephone number

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of a contact person with the Human Rights Committee who can explain the Committee's purpose for requesting the protected information. If the person agrees to give authorization, the TRBHA, ADHS/DBHS or Arizona State Hospital shall obtain written authorization as required in F.4 below and provide the requested information to the Human Rights Committee. Authorization for the disclosure of records of deceased persons may be made by the executor, administrator or other personal representative appointed by will or by a court to manage the deceased person's estate. If no personal representative has been appointed, the patient's spouse or, if none, any responsible family member may give the required authorization.

- ii. If the person does not authorize the release of the communicable disease related information, including confidential HIV information, and/or information concerning diagnosis, treatment or referral from an alcohol or drug abuse program, the person's record shall be provided to the Human Rights Committee with all communicable disease related information, including confidential HIV information, and information concerning diagnosis, treatment or referral from an alcohol or drug abuse program redacted. Other forms of protected health information shall be included in the record provided to the Human Rights Committee.
- iii. Requested information that does not require the currently or previously enrolled person's authorization shall be provided within 15 working days of the request. If the currently or previously enrolled person's authorization is required, requested information shall be provided within 5 working days of receipt of the currently or previously enrolled person's written authorization.
- iv. When protected health information is sent, the T/RBHA,

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ADHS/DBHS or Arizona State Hospital shall include a cover letter addressed to the Human Rights Committee that states that the information is confidential, is for the official purposes of the committee, and is not to be re-released under any circumstances.

- (2) In the event that ADHS/DBHS denies the Human Rights Committee's request for protected health information:
  - (a) ADHS/DBHS must notify the Human Rights Committee within 5 working days that the request is denied, the specific reason for the denial, and that the Committee may request, in writing, that the ADHS Director review this decision. The Committee's request to review the denial must be received by the ADHS Director within 60 days of the first scheduled committee meeting after the denial decision is issued.
    - i. The ADHS Director, or designee, shall conduct the review within 5 business days after receiving the request for review.
    - ii. The ADHS Director's decision shall be the final agency decision and is subject to judicial review pursuant to A.R.S. Title 12, Chapter 7, Article 6.
    - iii. No information or records shall be released during the time frame for filing a request for judicial review or when judicial review is pending.

4. Authorization Requirements

A written authorization for disclosure of information concerning diagnosis, treatment or referral from an alcohol or substance abuse program and/or communicable disease related information, including confidential HIV information, shall include:

- a. The specific name or general designation of the program or person

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permitted to make the disclosure;

- b. The name or title of the individual or the name of the organization to which the disclosure is to be made;
- c. The name of the currently or previously enrolled person;
- d. The purpose of the disclosure;
- e. How much and what kind of information is to be disclosed;
- f. The signature of the currently or previously enrolled person/legal guardian and, if the currently or previously enrolled person is a minor, the signature of a custodial parent or legal guardian;
- g. The date on which the authorization is signed;
- h. A statement that the authorization is subject to revocation at any time except to the extent that the program or person which is to make the disclosure has already acted in reliance on it; and
- i. The date, event, or condition upon which the authorization will expire if not revoked before. This date, event, or condition must ensure that the authorization will last no longer than reasonably necessary to serve the purpose for which it is given.

5. Problem Resolution

The Human Rights Committee may address any problems with receipt of requested information as provided in this policy, other than a denial of requested information, to the T/RBHA or Arizona State Hospital designated contact person. If the problem is not resolved, the Human Rights Committee may then address the problem to the Deputy Director of the Division of Behavioral Health Services.



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G. APPROVED BY:

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Leslie Schwalbe	Date
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Arizona Department of Health Services	
Division of Behavioral Health Services	